SUPREME COURT OF THE UNITED STATES

IN RE JAMES BLODGETT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL.

ON PETITION FOR WRIT OF MANDAMUS

No. 91–716. Decided January 13, 1992

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, concurring in the judgment.

In recent years, the federal judiciary has done a magnificent job of handling a truly demanding appellate workload. On a national basis, the average time between notice of appeal and disposition is now less than 11 months. Although delays that are not fully justified occasionally occur, only in the most extraordinary circumstances would it be appropriate for this Court to issue a writ of mandamus to require a court of appeals to render its decision in a case under advisement.[1]

In its petition for a writ of mandamus, the State criticizes the Court of Appeals' failure to rule on the merits of Campbell's second habeas corpus petition, which was

---

[1] "The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Kerr* v. *United States District Court for Northern District of California*, 426 U.S. 394, 402 (1976); see also *Will* v. *United States*, 389 U.S. 90, 95 (1967); *Ex parte Fahey*, 332 U.S. 258, 259 (1947). Mandamus "has traditionally been used in the federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Will*, 389 U.S., at 95 (internal quotation omitted). Accordingly, we have required that the party seeking issuance of the writ have no other adequate means to attain the desired relief, and that he demonstrate that his "right to issuance of the writ is 'clear and indisputable.'" *Bankers Life & Casualty Co.* v. *Holland*, 346 U.S. 379, 384 (1953), quoting *United States* v. *Duell*, 172 U.S. 576, 582 (1899).

submitted in June 1989. In their response, the judges on the panel provide a completely satisfactory explanation for their July 1990 decision to defer ruling on the merits of the petition—namely, their desire to avoid piecemeal litigation and to address all of Campbell's claims in a single ruling. Because that explanation alone is sufficient to mandate denial of the State's petition, there was no occasion for the panel to explain its pre-July 1990 delay.

The panel's decision to defer its ruling on the second habeas petition pending disposition of the third personal restraint petition filed in the Washington Supreme Court in July 1990 showed proper respect for that court. Although this Court expresses its concern about the State's interest in expediting its execution of Campbell, the Court is notably silent about the fact that the Washington Supreme Court considered the claims Campbell raised in his third personal restraint petition to be substantial. Although the state court, over the dissent of Justice Utter, denied Campbell's petition, that court appointed counsel, scheduled briefing, heard oral argument, and addressed the merits of Campbell's several claims. On these facts, the Ninth Circuit's decision to delay its ruling on Campbell's second habeas petition was sound, for it enables that court to consider the entire case at one time and will not delay the ultimate disposition of the matter.[2]

Although I am sure the Court did not intend to send such a message, its opinion today may be read as an open invitation to petitions for mandamus from every State in which a federal court has stayed an execution. This is unfortunate because, as we noted in *Kerr* v. *United States District Court for Northern District of California*, 426 U.S.

---

[2] On the facts of this case, the "severe prejudice" perceived by the Court is illusory. Even were we to direct the Ninth Circuit to decide Campbell's second petition, the State would still be required to wait until that court ruled on his third petition. The State seems to recognize as much, for it asks that we both direct the Ninth Circuit to decide the second habeas petition *and* vacate the August 7 order which permitted filing of the third habeas petition. Pet. for Writ of Mandamus 9.

394, 403 (1976), "particularly in an era of excessively crowded lower court dockets, it is in the interest of the fair and prompt administration of justice to discourage piecemeal litigation."

Moreover, as we have so frequently recognized, mandamus is disfavored because it has "the unfortunate consequence of making the judge a litigant, obliged to obtain personal counsel or to leave his defense to one of the litigants [appearing] before him." *Ex parte Fahey*, 332 U.S. 258, 260 (1947). Mandamus is an "extraordinary remed[y] reserved for really extraordinary causes," *ibid.*, precisely because of the great respect we have for our fellow jurists. This is not a situation in which the Ninth Circuit has unduly delayed decision of a case, but rather a situation in which that court has chosen to avoid repetitive and piecemeal litigation by consolidating two appeals. Respect for our fellow judges means providing them latitude in the handling of their burgeoning dockets, and granting due deference to those whose dockets are less discretionary than ours.

For the foregoing reasons, and because the State has failed to comply with this Court's Rule 20.1, I believe that the State's petition should have been denied summarily.